IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE FOURTEENTH DAY OF JULY
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE K.C. BHANU

WRIT PETITION NO : 14338 of 2001

Between:

P.Venkateshwar Rao S/o.P.Kishan Rao
R/o.Thatikal Village and Post, Nakrekal Mandal,
Nalgonda Dist.

..... PETITIONER

AND

1 Regional Manager, APSRTC, Nalgonda Division, Nalgonda District.
2 Hon'ble Labour Court Rep.by its Chairman, Hyderabad.
3 Depot Manager, APSRTC, Nalgonda Depot, Nalgonda District.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a writ, order or direction, more in the nature of Mandamus, declaring the proceedings No.PA/19(31)/95-RM.N dt.28-2-96 issued by the 1st respondent as arbitrary, illegal and disproportionate violating Art.14,16 and 21 of the Constitution of India and further declare the orders of the Hon'ble Labour Court in I.D.No.235/96 dt.18-4-2000 as unfair and unreasonable without examining various angles of the case and set aside the same and issue consequential direction to the respondents to reinstate the petitioner into service with all consequential benefits.

Counsel for the Petitioner:SMT.S.V.INDIRA

Counsel for the Respondents: MR.V.T.M.PRASAD Standing counsel for APSRTC

The Court made the following:

O R D E R :

This writ petition is filed under Article 226 of the Constitution of India, seeking a Mandamus declaring the action of the 1st respondent in issuing the impugned proceedings No. PA/19(31)/95-RMN dated 28-02-1996 as illegal and arbitrary.

Initially, the petitioner was appointed as Conductor in the year 1989 in the respondents-Corporation and was posted to the 3rd respondent's Depot.

As per the affidavit filed in support of the writ petition the allegation made against the petitioner is that on 30-01-1994, the checking officials conducted a sudden check on the route of Radhanagar Thanda at stage No.17/16 i.e. Narayanapoor and found certain irregularities committed by the petitioner. Basing on the report of the checking officials, a charge memo dated 08-02-1994 has been issued by the 3rd respondent-Depot Manager APSRTC, Nalgonda and simultaneously suspended the petitioner from service by framing certain charges against the petitioner. The said charges are extracted hereunder:

1. For having failed to observe the rule of "Issue & Start" while performing the service on route Radhanagar Thanda with vehicle No.1649 on 30-01-1994 which is misconduct on your part in terms of Reg.28(xxxii) of APSRTC Employees (Conduct) Regulations, 1963.

2. For having failed to collect the fare and issue tickets to a batch of 3 passengers who boarded the bus at Jangaon and alighting at Narayanapur ex-stages No.19/18 to 17/16 at the time of check which misconduct on your part in terms of Reg.28 (vi-a) of APSRTC Employees (Conduct) Regulations, 1963.

3. For having closed all denominations of tickets against the stage No.17, i.e. Narayanpur in the relevant column of SR bearing No. A2/1792644 without issuing the tickets to the above said three passengers at the time of check with this misconduct on your part in terms of Reg.28 (xxxii) of APSRTC Employees (Conduct) Regulations, 1963.

In response to the said charge memo, the petitioner submitted his explanation to

the 3rd respondent-Depot Manager, on 14-02-1994, denying all the allegations levelled against him. Thereupon, the respondents-Corporation conducted an enquiry. Basing on the report of the Enquiry Officer, the 3rd respondent-Depot Manager issued a show cause notice removing the petitioner from service on 14-05-1994. Pursuant to the said show cause notice, the petitioner submitted his explanation on 23-05-1994 denying the charges levelled against him. Thereupon, the petitioner preferred an appeal before the Senior Manager, Nalgonda, for reinstatement into service. But the same was not considered and rejected his request by proceedings dated 22-03-1995. Questioning the dismissal of the said appeal, the petitioner preferred an appeal before the 1st respondent-Regional Manager, APSRTC, Nalgonda. But the 1st respondent-Regional Manager, also vide proceedings No.PA/19(31)/95-RM.N., dated 28-02-1996, without giving any valid reasons rejected the claim of the petitioner by confirming the punishment imposed by the 3rd respondent-Depot Manager. Challenging the said removal order, the petitioner sought for a reference in I.D.No.235 of 1995 before the 2nd respondent -Labour Court, wherein, the Labour Court confirmed the order of punishment imposed on the petitioner. Aggrieved by the same, the present writ petition has been filed by the petitioner.

Heard both sides.

The only contention raised by the learned counsel for the petitioner is that the punishment imposed on the petitioner is disproportionate to the proved misconduct. Therefore, the impugned order is liable to be set aside.

On the other hand, the learned Standing Counsel for the respondents-Corporation opposed the writ petition on the ground that the irregularity committed by the petitioner is a financial irregularity and that categorical findings has been given by the Tribunal in this regard and therefore, the Award under challenge does not suffer from any infirmity calling interference of this Court.

I have perused the entire material on record.

The factual matrix is not in dispute. It is the case of the respondents-Corporation that the petitioner failed to issue tickets to the passengers, who boarded the bus at Jangaon and alighting at Narayanapur**. The Enquiry Officer, after conducting a detailed enquiry submitted his report to the respondents-Corporation holding that the charges levelled against the petitioner are proved. Considering the above enquiry**

report, the respondents-Corporation came to the conclusion that the charges levelled against the petitioner stands proved and that the punishment of removal from service is fit and proper and as such, issued a show cause notice of removal from service. The explanation submitted by the petitioner is that at the time of issuing tickets to the passengers, who boarded the bus, he was not doing well. The Labour Court while considering the matter, certain findings have been recorded and categorically stated that the petitioner has closed the statistical report without issuing tickets to the three passengers but the fare has also not been collected from them. Even the passengers' statement would indicate that they have not tendered the cash to the petitioner so as to obtain tickets and perhaps that is the reason why the penalty has been imposed on them by the checking officials for which the passengers readily paid the same. Therefore, it is not a case where financial irregularities can be attributable to the petitioner.

It is not the case of the department that the writ petitioner having collected the requisite fare from the passengers failed to issue tickets to them and thereby caused loss to the department. Merely on the surmises and conjectures, the Tribunal came to the conclusion that if the check had not been taken place, definitely, the petitioner would have caused wrongful loss to the respondents-Corporation by collecting money from the passengers. There cannot be any dispute that surmises and conjectures cannot be taken as a legal proof, even in disciplinary matters, unless there is some evidence. **Therefore, the above observation of the Tribunal, in my considered view, is not in consonance with the material available on record.**

As contended by the learned counsel for the petitioner, since it is not a case of financial irregularity or collecting fare from the passengers with a view to confer the same for his own use, the punishment imposed by the disciplinary authorities, as confirmed by the Tribunal is disproportionate to the proved misconduct. This is a case where the petitioner failed to issue tickets but it is not the case of the passengers that they have tendered money so as to take the tickets.

For the reasons aforesaid and in view of the fact that the punishment is not in consonance with the proved misconduct, the Award impugned is liable to be set aside and is accordingly, set aside. Accordingly, the respondents-Corporation is directed to reinstate the petitioner into service only for the purpose of notional increments and for terminal benefits. Further the petitioner is not entitled for any other monitory benefits including back wages.

With the above observation, the writ petition is disposed of. No costs.

_____

14-07-2005

Mjl/*

To,

1 The Regional Manager, APSRTC, Nalgonda Division, Nalgonda District.
2 The Chairman, Labour Court, Hyderabad.
3 The Depot Manager, APSRTC, Nalgonda Depot, Nalgonda District.

4. 2 CD copies.